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REMARKS

Applicant respectfully presents Claims 1-20 for examination in the RCE filed herewith. Claims 3 and 15 have been canceled herein and Claims 1, 7, 14 and 17 have been amended herein to more clearly define the scope of the presently claimed invention. No new claims have been submitted and no new matter has been introduced. Applicant respectfully submits that the claims and remarks presented herein overcome the Examiner's rejections in the Final Office Action dated January 6, 2006 in the parent application.

35 U.S.C. §102

Claims 1-3, 6-7, 14-15 and 17 stand rejected under 35 U.S.C. § 102(e) as anticipated by Girard (U.S. Publication No. 20030097585, hereafter "Girard"). The Examiner submits that Girard discloses all elements of these claims. Applicant respectfully traverses the rejection.

The Examiner points out that the Girard reference has a common assignee with the instant application. The Examiner submits, however, that based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. § 102(e). Applicant respectfully submits that the Examiner is mistaken. Specifically, Applicant submits that since the Girard reference and the instant application are in fact assigned to a common assignee, Girard does *not* qualify as prior art under 35 U.S.C. § 102(e). More specifically, 35 U.S.C. § 102(e) is applicable only in situations where the reference is "by another". In other words, if the reference is filed or owned by an entity *other than the Applicant*. In the present case, since the cases have a common assignee, Applicant respectfully submits that Girard cannot be deemed an application/patent "by another". Applicant therefore respectfully submits that Girard is an improper reference for use against the presently claimed invention. If the Examiner continues to maintain otherwise, Applicant respectfully invites the Examiner to provide Applicant with additional support for the argument, to enable Applicant to respond further. Barring such a showing, Applicant respectfully requests the

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Examiner to withdraw the rejection to Claims 1-3, 6-7, 14-15 and 17 under 35 U.S.C. §102.

35 U.S.C. §103

Claim 4 stands rejected under 35 U.S.C. §103 as being unpatentable over Girard in view of Herbert et al (U.S. Patent No. 5,757,919, hereafter "Herbert"). Additionally, Claims 5 and 16 stand rejected under 35 U.S.C. §103 as being unpatentable over Girard as applied to Claims 1 and 14, in further view of OEM Manual (hereafter "OEM"). Claims 9-10 stand rejected under 35 U.S.C. §103 as being unpatentable over Girard as applied to Claim 7, in further view of Parzych et al (U.S. Patent No. 5,375,243, hereafter "Parzych"). Claim 8 stands rejected under 35 U.S.C. §103 as being unpatentable over Girard as applied to Claim 7 above, in further view of Dell PowerEdge 7150" (hereafter "Dell") and in further view of McNabb et al. (U.S. Patent No. 6,289,462, hereafter "McNabb"). And finally, Claims 11 and 13 stand rejected under 35 U.S.C. §103 as being unpatentable over Girard in further view of Dell in further view of McNabb and in further view of Parzych. Applicant respectfully traverses the Examiner's rejection.

Without conceding the propriety of combining any of these references with Girard, Applicant respectfully submits that Girard cannot be used as a reference to render the present invention unpatentable under 35 U.S.C. §103. More specifically, as the Examiner concedes, Girard is co-owned by the assignee of the present application. As articulated in 35 U.S.C. 103(c):

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person"

The Examiner previously highlighted that Girard is allegedly prior art under 35 U.S. C. §102 (e). As a result, even assuming arguendo Girard qualifies as prior art under 35 U.S. C. §102 (e) (which Applicant maintains it does not), pursuant to 35 U.S.C. §103(c), Girard does not preclude patentability of the

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presently claimed invention. More specifically, Girard and the presently claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. As such, Applicant respectfully submits that Girard is an improper reference for use against the presently claimed invention and Applicant requests the Examiner to withdraw the rejection to Claims 4, 5, 8, 9-11, 13 and 16 under 35 U.S.C. §103.

In summary, Applicant respectfully submits that since all the Examiner's arguments are based on Girard in combination with other references, without addressing the propriety of combining the references, Girard simply cannot be used as prior art to render the present invention unpatentable under 35 U.S. C. §103. Applicant therefore respectfully requests the Examiner to withdraw the rejection to Claims 1, 2, 4-14 and 16-20 under 35 U.S.C. §103.

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CONCLUSION

Based on the foregoing, Applicant respectfully submits that the applicable objections and rejections have been overcome and that pending Claims 1, 2, 4-14 and 16-20 are in condition for allowance. Applicant therefore respectfully requests an early issuance of a Notice of Allowance in this case. If the Examiner has any questions, the Examiner is invited to contact the undersigned at (714) 669-1261.

If there are any additional charges, please charge Deposit Account No. 50-0221.

Respectfully submitted,

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